

**PROGRAMMATIC AGREEMENT
AMONG
THE UNITED STATES DEPARTMENT OF ENERGY,
MARYLAND ENERGY ADMINISTRATION,
AND THE MARYLAND STATE HISTORIC PRESERVATION OFFICE
REGARDING
MARYLAND ENERGY ADMINISTRATION GRANT PROGRAMS**

WHEREAS, the United States Department of Energy (DOE) administers the following financial assistance programs: *the Energy Efficiency and Conservation Block Grant Program* under the Energy Independence and Securities Act of 2007 (EISBG); *the State Energy Plan* under the Energy Policy and Conservation Act of 1975 and the State Energy Efficiency Programs Improvement Act of 1990 (SEPI); and *the Weatherization Assistance Program (WAP)* for Low-Income Persons under Title IV of the Energy Conservation and Production Act, the Energy Policy Act of 2005, the Energy Independence and Security Act of 2007, and the American Recovery and Reinvestment Act of 2009 (ARRA); collectively referred to as the "Programs;" and

WHEREAS, the unprecedented levels of funding available to the Programs, due in large measure to ARRA, has created a large volume of projects requiring expedited historic preservation reviews to ensure the timely obligation of funds, that create new jobs, and improve local and state economies; and

WHEREAS, the Maryland State Historic Preservation Office (MD SHPO) is experiencing unprecedented numbers of requests for historic preservation review of undertakings funded by all federal agencies, including undertakings funded by the Programs; and

WHEREAS, the Maryland Energy Administration (MEA) uses financial assistance from the DOE Programs and other sources to implement a variety of programs that assist with rehabilitation, energy efficiency retrofits, renewable energy projects, and weatherization (Undertakings); and

WHEREAS, Undertakings assisted by the federal Programs are subject to review and consultation under Section 106 of the National Historic Preservation Act (Section 106), 16 U.S.C 470f and its implementing regulations at 36 CFR Part 800; and

WHEREAS, all Undertakings assisted by MEA are subject to review and consultation under The Maryland Historical Trust Act of 1985 (MHT Act), State Finance and Procurement Article §§ 5A-325 and 5A-326 of the Annotated Code of Maryland; and

WHEREAS, DOE and the MD SHPO have determined that the Undertakings may adversely affect properties that are listed in or eligible for listing in the National Register of Historic Places (National Register); and

WHEREAS, DOE consulted with the Advisory Council on Historic Preservation (ACHP) regarding this Programmatic Agreement (PA), and the ACHP declined/did to be a signatory; and

WHEREAS, by memorandum dated August 28, 2009, DOE delegated certain tasks necessary for compliance

with Section 106, including the initiation of Section 106 compliance in accordance with 36 CFR 800.2(c)(4), to grantees and sub-grantees of funding from the Programs (Recipients); and

WHEREAS, the Undertakings covered under this PA are not located on Tribal lands and are primarily smaller scale activities and routine projects; and

WHEREAS, DOE and the ACHP were guided by the principles set forth in the ACHP's Affordable Housing Policy statement, adopted on November 9, 2006, in negotiating the Prototype Programmatic Agreement upon which this Programmatic Agreement is based;

NOW, THEREFORE, DOE, MEA, and the MD SHPO agree that the Undertakings shall be implemented in accordance with the following stipulations to satisfy DOE's Section 106 responsibilities and MEA's MHT Act responsibilities:

STIPULATIONS

DOE and MEA shall ensure that the Undertakings are implemented in accordance with the following stipulations:

I. Roles and Responsibilities

- A.** DOE shall be responsible for providing oversight of the PA, participating in the resolution of disputes between the MD SHPO and MEA, and providing technical assistance and guidance as needed.
- B.** MEA shall be responsible for consulting with consulting parties and conducting Section 106 reviews in a timely manner, preparing documentation for the MD SHPO and DOE, and maintaining records on Undertakings.
- C.** MEA shall ensure Undertakings that involve properties greater than forty five (45) years old and activities not listed Appendix A are submitted to the MD SHPO for review in accordance with this PA.
- D.** MEA shall ensure that the provisions of this PA apply to its sub-awards and Recipients.
- E.** The MD SHPO shall be responsible for reviewing project documentation and participation in consultation as set forth in this PA.
- F.** The ACHP shall be responsible for providing technical guidance, participating in dispute resolutions if appropriate, and monitoring the effectiveness of this PA.

II. Standard Review Process

For any Undertaking, MEA may choose to follow the standard Section 106 \ MHT Act review process, submitting (or requiring a sub-recipient to submit), each individual Undertaking to the MD SHPO for review and comment pursuant to 36 CFR Part 800.

III. Alternative Review Process

MEA may choose to follow the alternative Section 106 \ MHT Act review process set forth in this Stipulation for any Undertaking implemented during the duration of this PA while MEA has the services of a qualified professional (QP) meeting *The Secretary of the Interior's Professional Qualifications* (36 CFR Part 61, Appendix A) for Architectural History or Historic Architecture.

- A. The QP, or a MEA employee in close consultation with the QP, shall review each proposed Undertaking, and the Undertaking is exempt from MD SHPO review if MEA determines that both of the following conditions are true:
 1. the project area contains no buildings, structures, or significant landscape features that are more than 45 years old, and
 2. no part of the project area is recorded in the Maryland Inventory of Historic Properties (MIHP) for buildings, structures, archeology, or any other reason.
- B. If the Undertaking is not exempt from MD SHPO review by Stipulation III.A, the QP personally will review the Undertaking to determine if it is exempted from MD SHPO review by Appendix A.
- C. If the Undertaking is not exempt from MD SHPO review by Stipulation III.A or III.B, the QP will submit a completed MD SHPO Project Review Form (included as Appendix B to this PA), including all of the attachments listed in Section D of the MD SHPO Project Review Form, to the MD SHPO.
 1. If the MD SHPO responds that the project area is not eligible for listing in the National Register of Historic Places, then the Section 106 \ MHT Act review is complete and no additional consultation is necessary.
 2. If the MD SHPO responds that the Undertaking will have "no adverse effect" on historic properties, then the Section 106 \ MHT Act review is complete and no additional consultation is necessary.
 3. If the MD SHPO responds that the Undertaking will or may adversely affect historic properties, then the QP shall consult with the project proponents and, if an alternative is developed that will avoid adverse effects, submit the revised Undertaking to the MD SHPO for review and comment.
 4. If the MD SHPO does not respond within sixty (60) days, then MEA may assume the MD SHPO agrees with the determination of the QP that either the project area is not eligible for listing in the National Register or the Undertaking conforms to *The Secretary*

of the Interior's Standards for the Treatment of Historic Properties (36 CFR Part 68, July 12, 1995 Federal Register), and no additional consultation is necessary.

IV. Resolution of Adverse Effects

Should MEA decide to proceed with any Undertaking that will or may adversely affect a property that is eligible for listing in the National Register, consultation for that Undertaking pursuant to Section 106 and/or the MHT Act shall follow 36 CFR 800.6, and the adverse effects of the Undertaking shall be resolved pursuant to a memorandum of agreement signed by MEA, the MD SHPO, and any other consulting or concurring parties.

V. Public and Consulting Party Involvement

- A. MEA shall maintain a list of undertakings and shall make the documentation available to the public. MEA shall notify the MD SHPO if it is notified of other consulting parties or public interest in any Undertakings covered under the terms of the PA.
- B. MEA, independently or at the recommendation of the MD SHPO, may invite interested persons to participate as consulting parties in the consultation process for adverse effects in accordance with Stipulations IV.

VI. Dispute Resolution

Should any signatory to this PA or any member of the public object to any actions performed pursuant to this PA, MEA shall:

- A. For federal Undertakings subject to Section 106, notify DOE and the MD SHPO of the objection and follow the guidance of DOE to ensure compliance with Section 106.
- B. For state Undertakings subject to the MHT Act but not Section 106, notify the MD SHPO of the objection and follow the guidance of the Director of the Maryland Historical Trust to ensure compliance with the MHT Act.

VII. Reporting and Monitoring

- A. MEA shall maintain records of all Undertakings exempted from MD SHPO review under Stipulations III.A and III.B. By January 30th of each year for the duration of the PA, MEA shall provide the MD SHPO with an annual summary the Undertakings exempted from review under Stipulations III.A and III.B for the preceding calendar year.
- B. DOE, the ACHP, and the MD SHPO may monitor any Undertakings carried out pursuant to this PA. The ACHP may review Undertakings, if requested by DOE. DOE shall be entitled to address and make determinations on overall policy or administrative issues related to the implementation of these Programs.

VIII. Amendment

Any signatory to this PA may propose that this PA be amended, whereupon the signatories will consult

to consider such an amendment. Any amendments shall be developed and executed among the original signatories in the same manner as the original PA.

IX. Termination

Any signatory to this PA may terminate this PA, provided that the signatory proposing termination notifies the other signatories and the ACHP in writing explaining the reasons for termination and affording the other signatories at least thirty (30) days to consult and seek alternatives to termination.

X. Duration

This PA will be valid for three (3) years from the date of execution, as verified by DOE filing this PA with the ACHP.

Signatories:

U.S. DEPARTMENT OF ENERGY

By: Claire Broido Johnson Date: 4/29/10

CLAIRE BROIDO JOHNSON, ACTING PROGRAM MANAGER
OFFICE OF ENERGY EFFICIENCY AND RENEWABLE ENERGY
OFFICE OF WEATHERIZATION AND INTERGOVERNMENTAL PROGRAMS

MARYLAND ENERGY ADMINISTRATION

By: Malcolm Woolf Date: 4/22/10

Malcolm Woolf
Director

MARYLAND STATE HISTORIC PRESERVATION OFFICE

By: J. Rodney Little Date: 4-29-10

J. Rodney Little
Director / State Historic Preservation Officer

Appendix A
Undertakings Exempt from MD SHPO Review

The following activities are exempted from further review by the MD SHPO when the Undertaking is reviewed for MEA by a qualified professional (QP) meeting *The Secretary of the Interior's Professional Qualifications* (36 CFR Part 61, Appendix A) for Architectural History or Historic Architecture and when the QP determines that the Undertaking conforms to *The Secretary of the Interior's Standards for the Treatment of Historic Properties* (Standards).

- I. **Projects at sites for which there is a MD SHPO Determination of Eligibility form documenting that that the project site is not eligible for listing in the National Register of Historic Places.**

- II. **Exterior weatherization and efficiency upgrades:**
 - A. Air sealing of the building shell, including caulking, weather-stripping, other air-infiltration control measures on windows and doors, and installing thresholds.
 - B. Thermal insulation in walls, floors, ceilings, attics, and foundations.
 - A. Blown-in wall insulation where no holes are drilled through exterior siding.
 - B. Removable film on windows, solar screens, or window louvers.
 - C. Reflective roof coatings.
 - D. Installation of storm windows or doors and installation of screen doors.
 - E. Repair of windows, doors, and door frames.
 - F. Replacement of non-historic windows, doors, and door frames.
 - G. Replacement of historic windows, doors, and door frames when they are deteriorated beyond repair and the replacement features conform to the Standards.
 - H. Repair of minor roof and wall leaks prior to insulating attics or walls.
 - I. White Roofs, Cool Roofs, Green Roofs, Sod or Grass Roofs.
 - J. Rainwater catches and/or gray water systems.
 - K. Repair or replacement of exterior siding.
 - L. Roof replacement.

- III. **Interior weatherization and efficiency upgrades:**
 - A. Thermal insulation in walls, floors, ceilings, attics, crawl spaces, ducts and foundations.
 - B. Blown-in wall insulation.
 - C. Plumbing work, including replacement or installation of water heaters.
 - D. Electrical work, including improving lamp efficiency.
 - E. Sealing air leaks using weather stripping, door sweeps, and caulking and sealing major air leaks associated with bypasses, ducts, air conditioning units, etc.
 - F. Adding adjustable speed drives such as fans on air handling units, cooling tower fans, and pumps.
 - G. Install insulation on water heater tanks and pipes.
 - H. Install waste heat recovery devices, including desuperheater water heaters, condensing heat exchangers, heat pump and water heating heat recovery systems, and other energy recovery equipment.
 - I. Repair or replace electric motors and motor controls like variable speed drives.

- J. Incorporate lighting technologies such as dimmable ballasts, day lighting controls, and occupant controlled dimming.
- K. Convert incandescent lighting to fluorescent.
- L. Add reflectors, LED exit signs, efficient HID fixtures, and occupancy (motion) sensors.
- M. Replace refrigerators and other appliances.
- N. Installing fire, smoke or carbon dioxide detectors / alarms.
- O. Band joist insulation.

IV. Clean Energy projects:

- A. Install solar water heating systems on non-prominent locations.
- B. Solar systems (including photovoltaic and solar thermal) on non-prominent locations.
- C. Wind system at non-prominent locations.
- D. Geothermal systems at properties not recorded in the MIHP.

V. Work on heating and cooling systems:

- A. Clean, tune, repair or replace heating systems, including furnaces, oilers, heat pumps, vented space heaters, and wood stoves.
- B. Clean, tune repair or replace cooling systems, including central air conditioners, window air conditioners, heat pumps, and evaporative coolers.
- C. Install insulation on ducts and heating pipes.
- D. Conduct other efficiency improvements on heating and cooling systems, including replacing standing pilot lights with electronic ignition devices and installing vent dampers.
- E. Modify duct and pipe systems so heating and cooling systems operate efficiently and effectively, including adding return ducts, replace diffusers and registers, replace air filters, install thermostatic radiator controls on steam and hot water heating systems.
- F. Install programmable thermostats, outdoor reset controls, UL listed energy management systems or building automation systems and other HVAC control systems.
- G. Repair or replace vent systems on fossil-fuel-fired heating systems and water heaters to ensure that combustion gasses draft safely to outside.
- H. Install mechanical ventilation to ensure adequate indoor air quality if house is air-sealed to building tightness limit.
- I. Replacement or installation of HVAC equipment including furnaces, hot water tanks, pumps, motors, boilers, chillers, cooling towers, air handling units, package units, condensers, compressors, heat exchangers, plumbing, electrical, controls, ducting.
- J. Adding or replacing existing building controls systems including HVAC control systems and the replacement of building-wide pneumatic controls with digital controls, thermostats, dampers, and other individual sensors.

VI. General efficiency and repair measures:

- A. Energy audits and feasibility studies.
- B. Water conservation measures – like low flow faucets, toilets, shower heads, urinals – and distribution device controls.
- C. Repairing or replacing driveways, parking areas, and walkways.

- D. Excavating to gain access to existing underground utilities to repair or replace them, provided that the work is performed consistent with previous conditions and the project area is not recorded in the MIHP.
- E. New installation of non-hard wired devices including photo-controls, occupancy sensors, carbon dioxide, thermostats, humidity, light meters and other building control sensors.
- F. Electric base load measures not affecting the exterior of the building.
- G. Compact fluorescent light bulbs.
- H. Energy efficient light fixtures, including ballasts.
- I. LED light fixtures and exit signs.
- J. Painting over previously painted exterior surfaces.
- K. Installation or replacement of downspout extensions.
- L. Repairing or upgrading electrical or plumbing systems.
- M. Lead-based paint abatement.
- N. Building cleaning.
- O. Repairing masonry, including re-pointing and rebuilding chimneys.
- P. New metering devices.
- Q. Installing vents (such as ridge vents, roof vents, bath and kitchen vents, crawl space and foundation vents, soffit and frieze board vents, or combustion appliance flues).

Appendix B
Project Review Form



PROJECT REVIEW FORM

Request for Comments from the Maryland Historical Trust/
MDSHPO on State and Federal Undertakings



Submit hard copy of form and all attachments to:
Beth Cole, MHT, 100 Community Place, Crownsville, MD 21032

Section A: General Project Information

Project Name County

This is a new submittal OR This is additional information related Project Log Number:

Section B: Primary Contact Information

Contact Name Company/Agency

Mailing Address

City State Zip

Email Phone Number Ext.

Section C: Description of Undertaking

Location - Attach a map, preferably a section of a USGS quad, showing the location and boundaries of the project

Address City/Vicinity

List all federal and state agencies / programs (funding, permits, licenses) involved in this project (e.g. Bond Bill Loan of 2009, Chapter #; Transportation Enhancement Grant; HUD/CDBG; MDE/COE permit; etc.).	Agency Type	Agency/Program/Permit Name	Project/Permit/Tracking Number (if applicable)
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
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Proposed Work - Attach project description, scope of work, site plans / drawings

This project includes (check all applicable): New Construction Demolition Remodeling/Rehabilitation

This project involves: State or Federal Rehabilitation Tax Credits

Properties subject to an easement held by MHT, MET, or another entity

Section D: Identification of Historic Properties

This project involves: Properties designated as historic by a local government, listed in the National Register, or included in Maryland Inventory of Historic Properties

Property/District Name

The subject property has has not been the subject of previous archeological, architectural, or historical investigations.

Please describe

Attachments Map Project Description/Scope of Work Site Plans/Drawings

Photographs - Attach prints or digital photographs showing the project site including images of all buildings and structures, preferably keyed to a site plan

Conditions - Attach a brief description of past and present conditions of the project area (wooded, mined, developed, agricultural uses, etc) including construction dates of buildings, if known.

MHT Determination of Historic Properties

There are NO HISTORIC PROPERTIES in the project area. There are HISTORIC PROPERTIES in the project area.

The project will have NO EFFECT on historic properties. MHT REQUEST ADDITIONAL INFORMATION

The project will have NO ADVERSE EFFECT on historic properties. The project will have ADVERSE EFFECT on historic properties.